Radio-Electronics Officers Union *and* Michael F. Harris *and* Harry Dunleavy *and* Sea Land Service, Inc., Party in Interest. Cases 15–CB–3458, 15–CB–3469–3, and 15–CB–3488–2

January 21, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND OVIATT

On April 25, 1990, Administrative Law Judge William N. Cates issued the attached decision. The General Counsel and the Respondent filed exceptions and supporting briefs, and the General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions[2] as modified below and to adopt the recommended Order as modified.[3]

The judge found, inter alia, that the Respondent Union violated Section 8(b)(1)(A) and (2) of the Act in the operation of its exclusive hiring hall by removing Michael F. Harris from its referral registers for nonpayment of dues and by the operation of its rule requiring the timely payment of dues for continued registration on its referral lists. For the reasons that follow, we agree with the judge that the Respondent violated Section 8(b)(1)(A) by operating its hiring hall in this manner.

The Respondent is a national labor organization representing members and others employed as radio officers, radio electronics officers, and master radio electronics officers on vessels of the United States Merchant Marine Fleet, as well as other oceangoing freight transportation vessels. Pursuant to its collective-bargaining agreements with various employers and employer associations, the Respondent operates a hiring hall that serves as the exclusive source of referrals of radio officers to the various employers. The Respondent prepares both a national shipping list and the on-hand list under its shipping rules for job registrants. The national shipping list, which the Respondent normally prepares on or about the first of each month, establishes a ranking of eligible users of the hiring hall for referrals. An applicant for employment must register on the national shipping list in order to be eligible for referral. The applicant then makes a separate written request for placement on any of the Respondent's three different on-hands lists, which are prepared weekly and which establish the order of referral for jobs on vessels based in the Atlantic, Gulf, and Pacific waters.

Harris was a long-time union member who from time to time had utilized the Respondent's hiring hall. By letter dated March 15, 1988,[4] Harris requested that the Respondent place him on the Atlantic coast on-hand list and the Respondent did so. It is undisputed that Harris did not pay his second quarter dues, which were payable on or before April 1. By computer-generated action on April 1, the Respondent then automatically removed Harris from its national shipping list and sent Harris a form letter notifying him of this action. Thus, Harris no longer was eligible for referral from the Respondent's hiring hall.

Thereafter, on August 11, the Respondent's membership through a referendum conducted by the American Arbitration Association voted to raise the quarterly dues from $75 to $100 and to amend the bylaws as set forth below. Based on this vote, the Respondent has maintained in effect and enforced the following bylaws since at least November 1:

> Dues are required to be received by the Union at least fifteen days prior to the end of each calendar quarter and timely receipt of payment of dues (or fees as the case may be shall be required in order to permit registration or continuation of registration on appropriate shipping lists.

The Respondent's president, Thomas Harper, testified that under the new amendments the Respondent sends a mailing between 15 days before the beginning of each new calendar quarter and the actual start of the quarter informing applicants who are delinquent in

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] We affirm the judge's finding that the Respondent unlawfully refused to allow Harry Dunleavy to register for referral because he had not paid a fine for violation of hiring hall rules. We agree with the judge, for the reasons stated in his decision, that the Respondent failed to show that it would have refused to allow Dunleavy to register even if he had paid the fine. In this regard, we note that, contrary to the Respondent's contention that Dunleavy was not eligible for referral because he had not taken mandatory vacation time, the Respondent's attorney, in a letter to the Board's Regional Director's office, admitted that ''the Hiring Hall is unaware of whether Mr. Dunleavy has taken the mandatory vacation time.''

[3] The General Counsel has excepted to the judge's failure to require, in addition to the usual notice posting, that the Respondent mail copies of the notice to all members and users of its hiring hall in order to apprise them of their rights under the Act. Because the evidence shows that the Respondent's hiring hall refers applicants for employment on a nationwide basis, we agree with the General Counsel that the imposition of a mailing requirement is appropriate here. We shall modify the judge's recommended Order accordingly.

[4] All dates are in 1988 unless otherwise noted.

their dues or fees that the Respondent will delete their names from its referral lists unless they pay the amounts owed.

The judge found that the Respondent violated Section 8(b)(1)(A) and (2) of the Act by removing Harris from the national shipping list for nonpayment of dues without first providing him with notice of his delinquency and affording him a reasonable opportunity thereafter to meet his obligation prior to being dropped from the shipping list. In reaching this conclusion, the judge stressed that before removing a dues-delinquent applicant from its referral register, a union has a fiduciary duty arising from its union-security clause to notify the individual of his delinquency and give him a reasonable opportunity to satisfy his dues obligations. The judge found that the Respondent failed to afford Harris these procedural protections and that, therefore, Harris' removal from its out-of-work list violated the Act.

The Respondent points out in its exceptions that the record is devoid of evidence that any collective-bargaining agreement to which it is a party has a union-security clause. In these circumstances, the Respondent argues that its legitimate requirement that all registrants pay a uniform quarterly fee in advance was nondiscriminatory and did not coerce employees in the exercise of their Section 7 rights. The Respondent therefore urges the Board to find that its hiring hall operations did not violate the Act.

In considering this issue, we initially note that, as the Respondent has asserted, the General Counsel has failed to present evidence that any collective-bargaining agreement providing for the operation of the Respondent's hiring hall contains a union-security clause. Nevertheless, we emphasize that the Respondent has not contested the judge's finding that its hiring hall is the exclusive source of referrals for the employers and employer associations who are signatory to the applicable collective-bargaining agreements. It is well established that, as the operator of an exclusive hiring hall, the Respondent owes a duty of fair representation to applicants using that hall.[5] As part of its duty of fair representation, the Respondent has an obligation to operate the exclusive hiring hall in a manner that is not ''arbitrary or unfair.''[6] The Board has reasoned that whenever a union prevents an employee from being hired, it demonstrates its power and influence over his livelihood so dramatically as to compel an inference that the effect of the union's action is to encourage union membership on the part of all employees who have perceived the display of power. A union may overcome that inference, however, either by acting pursuant to a valid union-security clause or by showing that its action was necessary to the performance of its representative function.[7] The Respondent has failed to overcome that inference. There is no evidence of a union-security clause here, and the Respondent has not shown that removing Harris from the national shipping list in the manner it did was necessary to the effective performance of its representative function.

Thus, we find that the Respondent had a duty to notify members and other applicants for employment of any dues or fees they owe and to give them a reasonable opportunity to remit payment before removing their names from its referral registers. We further conclude that in this case the Respondent acted arbitrarily and unfairly by removing Harris from the national shipping list for nonpayment of dues and by the operation of its rule described above requiring the timely payment of dues for continued registration on the various shipping lists the Respondent maintains. Although the Respondent argues that it gave Harris notice of his dues obligation by setting forth the requirement in its bylaws and by occasionally mentioning it in monthly newsletters distributed to the membership, such general notification of the dues requirement is insufficient, in our view, to justify the Respondent's removal of Harris' name from the referral list. We find, rather, that in light of its obligation to operate the hiring hall fairly and impartially the Respondent was obligated to give Harris specific notice of his particular financial deficiency before taking action that would be detrimental to Harris' employment opportunities. Further, regarding the application of the Respondent's November 1988 rules revision, we stress that the Respondent's own witness, President Harper, testified that under the new amendments the Respondent sends a mailing at some point between 15 days before the beginning of each new calendar quarter and the actual start of the quarter informing applicants of any dues or fees delinquency. Based on Harper's testimony, we agree with the judge that the Respondent has not afforded applicants who are in arrears on dues or fees a reasonable time to make these payments.

Thus, for these reasons, we adopt the judge's findings that the Respondent violated Section 8(b)(1)(A) of the Act by removing Harris from its referral registers and by the operation of the November 1988 rule requiring the timely payment of dues for continued registration.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Radio-Electronics Officers Union (Radio Officers Union), Panama City, Florida, its officers, agents, and rep-

[5] See *Breininger v. Sheet Metal Workers Local 6*, 493 U.S. 67 (1989).

[6] See *Miranda Fuel Co.*, 140 NLRB 181, 184 (1962).

[7] *Operating Engineers Local 18*, 204 NLRB 681 (1973).

resentatives, shall take the action set forth in the Order as modified.

Insert the following as paragraph 2(d) and reletter the subsequent paragraph accordingly.

''(d) Mail a copy of the notice to all members and users of the Respondent's hiring hall. The Respondent shall mail the notices to the last known address of each member and applicant for employment at its hiring hall.''

Joseph B. Morton III, Esq., for the General Counsel.
Ernest Allen Cohen, Esq. (Marchi, Jaffe, Steinberg, Crystal, Katz & Burke), of Tucson, Arizona, for the Respondent.

DECISION

STATEMENT OF THE CASE

WILLIAM N. CATES, Administrative Law Judge. These cases were tried before me in Panama City, Florida, on November 8 and 9, 1989, based on various unfair labor practice charges filed by Michael F. Harris (Harris) and Harry Dunleavy (Dunleavy) against the Radio Officers Union, Radio Electronics-Officers Union (the Union). An order consolidating cases, consolidated complaint and notice of hearing (complaint) was issued by the Regional Director for Region 15 of the National Labor Relations Board (Board) on January 31, 1989. The charge in Case 15–CB–3487 (formerly Case 22–CB–5892–5) filed by Harris on June 8, 1988, related in general terms to a hiring hall classification grandfathering provision. That charge was settled by agreement of the parties at the conclusion of the hearing on November 9, 1989. That case was severed from the remaining cases and remanded to the Regional Director for Region 15 of the Board for compliance. The charge in Case 15–CB–3488–1 (formerly Case 22–CB–5895–1) filed by Harris on June 6, 1988, involved allegations that 35 unidentified individuals were dropped from the Union's shipping lists without adequate notice of dues delinquencies. That charge was withdrawn by counsel for the General Counsel in his posttrial brief. Accordingly, no consideration will be given to the allegations of that case. The charge in Case 15–CB–3488–2 (formerly Case 22–CB–5895–2) filed by Harris on June 6, 1988, alleges the Union violated Section 8(b)(1)(A) and (2) of the Act, by removing Harris from its national shipping list for nonpayment of dues without first providing him with notice of his delinquency and without affording him a reasonable opportunity to meet his obligations in that respect. The charge in Case 15–CB–3469–3 filed by Harris on December 6, 1988, alleges that the Union by maintaining bylaws which require the timely receipt of dues payments in order for radio officers to register or to continue registration on its shipping lists without advance notice to delinquent members that they are in fact delinquent violates Section 8(b)(1)(A) and (2) of the Act. The charge in Case 15–CB–3458 (formerly Case 22–CB–6000) filed by Dunleavy on November 14, 1988, alleges the Union violated Section 8(b)(1)(A) and (2) of the Act by refusing to register Dunleavy for referral from its exclusive hiring hall because he failed to pay a fine and/or for reasons other than his failure to tender periodic dues and initial fees uniformly required as a condition of acquiring or retaining membership in the Union.

The parties were afforded full opportunity to examine and cross-examine witnesses, to argue orally, and to submit briefs. Briefs which have been carefully considered were submitted by counsel for the General Counsel and counsel for the Union.

On the entire record,[1] including my observation of the demeanor of the witnesses, I make the following

FINDINGS OF FACT

I. THE COMPANY'S BUSINESS AND THE UNION'S LABOR ORGANIZATION STATUS

At all times material Sea Land Service, Inc., a corporation with and an office and place of business in Edison, New Jersey, has been engaged in the interstate and international transportation of freight. During the 12 months preceding the issuance of complaint, Sea Land Service, Inc. derived gross revenues in excess of $50,000 for the transportation of freight between the States of the United States and between the United States and foreign countries. The complaint alleges, the Union admits, and I find Sea Land Service, Inc. is, and at all times material has been, an employer engaged in operations affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The complaint alleges, it is admitted, and I find the Union is, and all times material has been, a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background*

The Union is a national labor organization representing members and others employed as radio officers, radio electronics officers, and master radio electronics officers on vessels of the United States Merchant Marine Fleet as well as other oceangoing freight transporting vessels. The Union and various employer-associations and employers, including Sea Land Service, Inc., are parties to collective-bargaining agreements requiring that the Union be the sole and exclusive source of referrals of radio officers to employment with the various employers. The Union operates its hiring hall under both general and national shipping rules, which rules are made part of the collective-bargaining agreements between the Union and various employer-associations as well as other employers. Additionally, such shipping rules are incorporated into the bylaws of the Union. The shipping rules utilized by the Union establishes, among other things, a system for the distribution of job assignments to users of its hiring hall. The Union's shipping rules provide for two shipping lists. The two lists are the national shipping list and the on-hand list. The national shipping list establishes a ranking of eligible users of the hiring hall for referrals. Anyone wishing to use the hiring hall must submit a written request to be placed on the national shipping list. The national shipping list is normally prepared on or about the first of each month and the listings are based on information received in the form of written requests that are received prior to close of business on the first day of each month. After requesting to be placed

[1] I have considered all record evidence and positions taken by the parties in argument at trial or in their posttrial briefs whether alluded to in this decision or not.

on the national shipping list a user of the hiring hall must submit a separate written request for placement on the Union's Atlantic, Gulf, or Pacific on-hand lists. The on-hand lists are prepared on the first day of each week and the listings are based on the rankings set forth in the most recent national shipping list. The on-hand lists for the specific areas are the lists that are actually used to dispatch users of the hiring hall to available assignments. Simply stated a user of the hiring hall must be on the national shipping list in order to thereafter be listed on the weekly on-hand lists from which all referrals are made.[2]

In order to better understand the facts set forth and to understand the legal conclusions drawn therefrom it is helpful to note the following portions of the Union's shipping rules:

ARTICLE NINETEEN—NATIONAL SHIPPING LIST RULES

SECTION 1. A member must be in good standing to be placed on the National Shipping List, and must remain so to continue his employment. Non-members must pay the current quarterly service fee to be placed on the National Shipping List and must continue to pay the quarterly service fee during the period of their employment.

SECTION 2. Registration for placement on the National Shipping List shall be made in writing or in person at any port office. Numbers in the appropriate group for which a Radio Officer is eligible shall be assigned as of the date such registration is received.

SECTION 3. The National Shipping List will be updated monthly on the first business day of each month.

SECTION 4. Radio Officers may request placement on the National Shipping List in writing when off a vessel for vacation or any other reason. Upon assignment for more than fourteen (14) days the Radio Officer's name shall be removed from the list.

SECTION 5. Should an error occur on the National Shipping List, the error will be corrected immediately when discovered.

ARTICLE TWENTY—SHIPPING RULES

SECTION 1. In order to provide the maximum amount of work for the largest number of Radio Officers and to equalize employment opportunities:

a. Each Radio Officer shall take all vacation accrued when requesting a relief, or when leaving a temporary assignment.

b. A Radio Officer is required to take a mandatory vacation upon accrual of ninety (90) days vacation benefits, except as set forth in paragraph (d) of this Section. This rule will apply at the end of the voyage and/or port period.

c. Upon recommendation of the District Administrative Council and with the approval of the District Executive Council, the ninety (90) days rule may be modified to meet existing circumstances.

d. A Radio Officer attached to a vessel on extended voyages which may exceed six (6) months or attached to a vessel on an overseas shuttle route may remain employed on the vessel for six (6) months before requesting a vacation in accordance with Section 1.a. above.

B. *Removal of Harris from the National Shipping List for Nonpayment of Dues*

As noted earlier it is alleged in Case 15–CB–3488–2 that the Union violated Section 8(b)(1)(A) and (2) of the Act, when on April 1, 1988, it dropped Harris from its national shipping list for nonpayment of dues without adequate notice of his dues delinquency. The operative facts, some of which are set forth earlier in this decision, related to Harris are not in dispute.[3] As of April 1, 1988, Harris had been a long-time member of the Union and had from time to time utilized the Union's hiring hall. In a letter dated March 15, 1988, and received by the Union on March 19, 1988, Harris requested that he be placed on the Atlantic Coast on-hand list.[4] Harris was placed on the next Atlantic Coast on-hand list, however, he did not thereafter request to be on any future on-hand lists.[5] Harris did not pay his second quarter dues which were payable on or before April 1, 1988. On April 1, Harris was, by computer generated action, automatically removed from the Union's national shipping list. A form letter was sent to Harris on April 1 that informed him:

Date [April 1, 1988]

Dear Brother: [Harris]

You are being dropped from the National Shipping List because you are in arrears in dues for the following quarter/quarters: [Second Quarter 1988]

Please remit [$75] to be in good standing with the Radio-Electronics Officers Union.

Please reregister after dues are paid.

Union President Thomas C. Harper (Harper) testified Harris was not given any individualized advance notice prior to his being dropped from the national shipping list on April 1, 1988, for nonpayment of dues. Harris, as well as all union members, were mailed union newsletters generally on a monthly basis. In its February, April, and December 1987 Newsletters, the Union advised its members they had to be in good standing with the Union to be on its national shipping list as well as any on-hand lists. For example, the April 1987 newsletter contained a portion captioned ''Dues Problems'' which read as follows:

NINE MEMBERS WERE DROPPED FROM THE APRIL NATIONAL SHIPPING LIST FOR NON-PAYMENT OF DUES. MEMBERS ARE REQUIRED TO BE IN GOOD STANDING TO GET ON THE LIST. AND THEY ARE REQUIRED TO BE IN GOOD STANDING TO STAY ON THE LIST. THE COMPUTER IS MERCILESS, AND EVEN IF YOU ARE NUMBER 1 WHEN YOU GET BEHIND IN PAYMENT OF DUES, YOU WILL BE DROPPED FROM

[2] Prior to August 1988 the on-hand lists were prepared on a bimonthly basis.

[3] Harris was not present at any time during the hearing.

[4] Harris' written request reads as follows: ''Available on-hand Atlantic permanent assignment Sea Land Econo Ship, 22 March 88—4 April 88. No collect calls accepted.''

[5] As is noted elsewhere in this decision no user of the hiring hall can be placed on an on-hand list for any location without first being on the Union's national shipping list.

> THE LIST IMMEDIATELY. THE BEST WAY TO AVOID THIS IS TO PAY BY THE YEAR. 4/4/87

President Harper testified he was not aware of any notice of any kind being sent to Harris between December 1987 and April 1, 1988, regarding delinquent dues.

It is undisputed that Harris did not pay his union membership dues for the second quarter of 1988. Nor is it disputed that he was automatically removed from the Union's national shipping list on April 1, 1988, because he had not timely paid his dues. Against that backdrop counsel for the General Counsel urges that a union has a duty to deal fairly with its members before it enforces the terms of any union-security provisions[6] against them. The Union does not take issue with the above stated principle but simply urges it dealt fairly with Harris and other like situated users of its hiring hall. Counsel for the General Counsel asserts the Union failed to meet its minimum fair duty obligation of (1) notifying Harris of his dues delinquency, (2) advising him of the amount owed and the method and manner that amount was arrived at, and (3) providing him a reasonable opportunity to comply with the obligations imposed by the union-security clause before dropping him from its national shipping list. The Union urges it gave Harris and others adequate advance notice (1) by its published shipping rules and bylaws namely article XIX, section 1, that reads in pertinent part ''A member must be in good standing to be placed on the National Shipping List, and must remain so to continue his employment,'' (2) by its monthly newsletters that contained portions of its shipping rules and indicated such would be strictly enforced, (3) by its strict computerized enforcement of its shipping rules which strict enforcement had been made known to its membership, and (4) by informing those dropped by specialized letter that they had been in fact dropped from its national shipping list.

It is helpful to note certain principles the Board and courts have established with respect to issues similar to the ones under consideration. It is well settled that a union may lawfully seek the discharge of an employee where dues are in arrears if it has a valid union-security clause in its collective-bargaining agreement with the employer. *Iron Workers Local 118*, 257 NLRB 564, 566 (1981), enfd. 720 F.2d 1031 (9th Cir. 1983). *Mayfair Coat & Suit Co*., 140 NLRB 1333 (1963). The Board noted that ''a valid union-security clause can be enforced at the hiring hall level by refusal to refer an employee whose dues are in arrears.'' Id. at 566. The court in *NLRB v. Hotel Employees Local 568*, 320 F.2d 254 (3d Cir. 1963), noted the existence of a contractual union-security clause inevitable leads to employee dependence on a labor organization. The court further noted:

> There necessarily arises out of this dependence a fiduciary duty that the union deal fairly with employees. See *N.L.R.B v. International Woodworkers of America*, 264 F.2d 649 (9th Cir. 1959), cert. den. 361 U.S. 816, 80 S.Ct. 56, 4 L.Ed.2d 63 (1959); *International Union of Electrical, Radio & Machine Wkrs. v. N.L.R.B.*, 113 U.S. App. D.C. 342, 307 F.2d 679 (1962) cert. den. 371 U.S. 936, 83 S.Ct. 307, 9 L.Ed.2d 270 (1962). At the minimum, this duty requires that the union inform the employee of his obligations in order that the employee may take whatever action is necessary to protect his job tenure.

The Board in *Carpenters Local 563*, 272 NLRB 1249 fn. 1 (1984), held that by failing to allow two individuals a reasonable opportunity to satisfy their delinquent dues obligations before denying them referrals the union violated Section 8(b)(1)(A) and (2) of the Act. With respect to the *Carpenters* case, counsel for the General Counsel contends that before the Union here could have escaped violating the Act it would have had to have given Harris individualized notice of his dues delinquency, advised him of the amount owed, informed him of the method used in computing the amount, and have given him a reasonable opportunity to comply therewith before removing him from its national shipping list and its on-hand lists. Counsel for the Union urges the *Carpenters* case does not establish a per se rule that a union must always give delinquent members an opportunity to pay back dues before they can lawfully be removed from hiring hall lists. In any event, the Union urges the instant case is factually distinguishable from the *Carpenters* case and notes that case was limited to its particular circumstances.

Applying the above principles, I am persuaded a union may not lawfully remove users of its hiring hall from its exclusive referral lists without first (1) advising the users they are in arrears on their dues, (2) advising the users of the amounts owed and how the amounts were arrived at, and (3) give the users a reasonable time to take corrective actions to remain on the exclusive referral lists. Anything less than the above will not relieve a union of its fiduciary obligations. See, e.g., *Communications Workers Local 9509 (Pacific Bell)*, 295 NLRB 196 (1989). In the instant case the Union clearly failed to demonstrate it afforded Harris the benefit of the above outlined minimum standards. I reject the Union's contention that the generalized notice it provided in its monthly newsletters taken in conjunction with its assertion its shipping rules were well known was sufficient to satisfy it fiduciary duty to members and others utilizing its hiring hall. The Union's contention that the *Carpenters* case is factually distinguishable from the instant one misses the point on the general principle established by that case. The Union correctly points out that the union in the *Carpenters* case did not have a uniform and invariable practice of denying referrals for nonpayment of dues, whereas it did. However, the fact the Union in the instant case, through its computerized action, has been ''merciless'' in removing anyone from its national shipping list that was in arrears on dues does not meet the issue of affording the users of its hiring hall services an opportunity to clear up any delinquencies before being removed from its lists. The simple fact that the Union treated everyone the same with respect to removing them from its national shipping list for any delinquencies does not insulate it from the fiduciary duty it owes the users of its exclusive hiring hall services. I likewise reject the Union's other ''distinguishing element'' in that it contends its role as a maritime union makes it ''unique'' and as such it would be ''unworkable and inequitable'' to apply the *Carpenters* standard to the maritime industry. The Union argues that in the construction industry, which was involved in the *Carpenters* case, it was and is easy to have a delinquent member removed from a nearby job after being referred and then

[6] Counsel for the General Counsel does not challenge the union-security or the hiring hall provisions in the instant case.

being apprised of dues arrearages whereas it would not be so simple where the delinquent dues member is on the high seas. The Union asserts that the problems it, as well as the employer's, would face in removing delinquent members from jobs at sea, are almost insurmountable in that all seagoing vessels must have a licensed radio officer on board. The Union argues that if a radio operator is removed at sea the vessel may not continue to operate legally until a replacement is found and such could result in severe hardships such as cargo spoilage or late delivery penalties for the shipper. The fact a maritime union may have a difficult time policing dues payments or that employers involved therewith may potentially incur increased monetary risks does not relieve a union of the fiduciary duty it owes to those utilizing its exclusive hiring hall arrangements.

In summary, I find as alleged in the complaint that the Union violated Section 8(b)(1) (A) and (2) of the Act, when on April 1, 1988, it removed Harris' name from its national shipping list because he failed to remain current in his dues without first informing him of such failure and without affording him a reasonable opportunity thereafter to meet his dues obligations.[7]

C. *The Rule Requiring the Timely Payment of Dues to be or Continue Registration on Shipping Lists*

As earlier noted it is alleged in Case 15–CB–3469–3 that the Union violated Section 8(b)(1)(A) and (2) of the Act by, since on or about November 30, 1988, maintaining in effect and enforcing the following bylaws:

> Dues are required to be received by the Union at least fifteen days prior to the end of the each calendar quarter and timely receipt of payment of dues (or fees as the case may be) shall be required in order to permit registration or continuation of registration on appropriate shipping lists.

It is undisputed that the Union changed its bylaws with respect to the payment of and amount of dues by a referendum of its membership conducted by the American Arbitration Association (AAA), the results of which were certified by the AAA on August 11, 1988. The union membership not only adopted the above set forth amendment to its bylaws but in addition raised its quarterly dues from $75 to $100. Thereafter, employers that were parties to collective-bargaining agreements with the Union consented to the above-amendment changes which changes were incorporated into the applicable collective-bargaining agreements. The exact effective date for the amendments is not clear; however, it appears the amendments were effective by at least November 1, 1988.

Union President Harper testified that under the new amendments a mailing is sent between 15 days prior to the beginning of each new quarter and the actual start of the new quarter that advises those using the hiring hall that they are delinquent in their dues and further advises that the dues are required in order to permit or continue registration on its shipping lists. President Harper testified he ''believed'' the same form type letter previously utilized before the new amendment is still utilized to inform members of their delinquencies. The language of the prior letter is set forth elsewhere in this decision and will not be repeated here.

Counsel for the General Counsel urges that although the Union may lawfully remove members and others from its shipping lists for being delinquent in dues or fees payments it must not breach its fiduciary duty to those being removed from or denied registration on its shipping lists. Counsel for the General Counsel also urges that to meet its duty to deal fairly with users of its hiring hall services the Union must at a minimum provide users with notification of (1) the precise amount owed in dues or fees, (2) the method utilized in arriving at the amounts owed, and (3) provide users a reasonable opportunity to make such payments. Counsel for the General Counsel urges that under the new amendment the Union demands timely payment of dues or fees and removes individuals from its lists at the same time it notifies them they are delinquent in their dues or fees payments. Counsel for the General Counsel urges that in so doing the Union violates the fiduciary duty it owes its members and users and as such violates the Act.

Counsel for the Union argues that its newly amended dues and fees procedures meets all fiduciary obligations it owes its members and users of its services and further urges that counsel for the General Counsel has failed to present any evidence to show its present system is anything but fair and reasonable. The Union asserts it provides 15 days' advance notice before it actually removes anyone from its shipping lists for dues arrearages, thus it argues those impacted have a reasonable opportunity to establish or reestablish good standing with the Union and to be restored to its shipping lists.

Under its newly amended dues and fees requirements and notification procedures the Union meets for the greater part at least two of the three requirements it must in order to fulfill its fiduciary obligations owed to the users of its exclusive referral system. First members are advised they are in arrears on dues and the amount owed ($100) was arrived at by referendum of the union membership. Hence, notification is given and the method of arriving at the amount owed has been established. However, I find the Union has failed, in the scant record evidence on this point, to demonstrate that those in arrears on dues or fees were actually afforded a reasonable time to take the necessary steps to remain on the shipping lists. The Union argues letters of notification have been and are sent to those in arrearage on dues or fees beginning 15 days before each new quarter starts. However, the record does not conclusively support that argument. Union President Harper testified notices went out 15 days prior to each quarter break as called for in the newly amended bylaws. However, a reading of the changed bylaws only reflects dues or fees are to be received 15 days prior to the end of each calendar quarter not that notification will automatically be sent to those delinquent in dues or fees payments on that precise date. When questioned further on this matter, President Harper testified in reference to a specific example that mailings were made between 15 days before the end of a quarter and the actual beginning of a new quarter. I am persuaded that 15 days' advance notice is reasonable. See, e.g., *United Metaltronics Local 955*, 254 NLRB 601 (1981). However,

[7] It is inconsequential at this stage of the proceeding that Harris may well have rejected various job offers from the Union or that he had indicated he would not accept collect telephone calls from the Union related to any matters including job referrals. Such may become pertinent at the compliance stage of this matter.

the Union failed to conclusively demonstrate that members and users of its hiring hall services were actually afforded 15 days' advance notice to correct their delinquencies. Accordingly, and in light of the above, I find the Union violated Section 8(b)(1)(A) and (2) of the Act as alleged in the complaint by failing to demonstrate it allowed delinquent dues payers or users of its hiring hall services a reasonable time to correct dues or fees deficiencies before removing such users from its shipping lists.

D. *The Alleged Failure to Allow Dunleavy to Register for Referral*

As noted earlier it is alleged in Case 15–CB–3458 that the Union on or about October 1, 1988, refused in violation of Section 8(b)(1)(A) and (2) of the Act to allow employee Dunleavy to register for referral from its exclusive hiring hall because he failed to pay a fine and for reasons other than his failure to tender periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership in the Union.

Dunleavy has worked as a radio officer engaged in ship-to-shore communications since at least 1977. Dunleavy has been a longtime member of the Union. Internal union charges were lodged against Dunleavy on or about July 15, 1987, as a result of his having accepted a temporary job assignment without clearance from the Union on a seagoing vessel not covered by a collective-bargaining agreement with the Union. On or about July 17, 1987, the Union found Dunleavy guilty of the internal union charges lodged against him and as a result thereof he was fined $1000, suspended from membership in the Union for 1 year, and suspended from using the hiring hall for 1 year.[8] In July 1988, Dunleavy completed serving his suspension from membership in the Union and from use of the hiring hall but he has never at any time paid the $1000 fine levied against him. It is undisputed that Dunleavy did not attempt to utilize the hiring hall during the year of his suspension; however, he did attempt in January 1988 to pay quarterly union dues which were rejected by the Union and returned to Dunleavy. During his suspension from membership in the Union, Dunleavy accepted a seagoing assignment through the American Radio Association (ARA)[9] aboard the merchant vessel *Margaret Lykes* which assignment lasted for approximately May 23 until October 18, 1988.

In a letter dated October 25, 1988, Dunleavy advised the Union of the employment dates he had been assigned aboard the *Margaret Lykes* and requested that he be placed ''on the November, 1988 National Shipping List.'' Thereafter, on October 29, 1988, Dunleavy sent a mailgram to the Union in which he requested placement on the Atlantic on-hand list. Dunleavy testified without contradiction he telephoned the union hall on November 2, 1988, and spoke with a secretary (Sheryl Bell) about his placement on the national shipping list. Dunleavy testified the secretary refused to give him any information about the list and in fact hung up the telephone on him. Dunleavy testified that after a few minutes he again on November 2, 1988, called the union hall and spoke with the same secretary who again refused to provide him any information on the national shipping list, but did state a union official would call him back.[10] Dunleavy testified no one called him back, so on November 3, 1988, he called the union hall again. Dunleavy again asked if he was on the national shipping list and what his position on that list was. Dunleavy testified without contradiction he was told he was not on the national shipping list and that he would be given the reasons why.[11] Dunleavy was not allowed to speak with any union official; however, on that date (November 3, 1988) Union President Harper wrote Dunleavy a three-page letter in which he acknowledged Dunleavy's written communications with the Union on October 25 and 29, 1988, and his two telephone calls to the union hall on November 2, 1988. In his letter, Harper informed Dunleavy he had sought legal advice on Dunleavy's registration request.[12] Harper set forth portions of his attorney's letter of advice in his letter to Dunleavy and informed Dunleavy he was ineligible to be placed on the national shipping list for three reasons. The three reasons set forth in Harper's letter were (1) Dunleavy had not paid the $1000 fine imposed on him by the Union, (2) Dunleavy appeared to be in violation of the ''shipping rules taken as a whole'' related to dual registration by being on a shipping list outside the Union without permission, and (3) Dunleavy had not completed taking some outstanding accrued mandatory vacation time.[13] On November 4, 1988, Dunleavy again telephoned the union hall and on this occasion spoke with Danielle Holleyfield.[14] According to Dunleavy's credited testimony Holleyfield, told him ''there were jobs available'' and only ''about 10 people'' on the national shipping list. Dunleavy asked if he was on the national shipping list[15] and Holleyfield told him he was not. Dunleavy testified Holleyfield did not give him any reason for his not being included on the Union's November national shipping list.[16]

Dunleavy testified he felt any further attempts to be referred for work assignments through the Union's hiring hall

[8] The propriety of the internal union charges that resulted in the discipline noted are not before me.

[9] Although the evidence is not conclusive nor is it essential to decide the issue, it appears the ARA is a rival of the Union.

[10] The Union's telephone logs reflect Dunleavy called the union hall at 10:30 and 10:45 a.m., and that he spoke on both occasions with Sheryl Bell. Bell noted on the logs that Dunleavy was ''very demanding'' in seeking information.

[11] The Union's telephone logs reflect Sheryl Bell spoke with Dunleavy at 10:50 a.m. on November 3, 1988, and that the subject matter of their conversation was the ''shipping list.''

[12] In the attorney's letter to Harper, the attorney outlined the question Harper had sought advice on as follows: ''You have asked for my opinion with regard to whether or not Mr. Dunleavy should be placed upon the National Shipping List for November 1988.''

[13] Harper explained in his letter why Dunleavy had not been placed on the October national shipping list. However, it is unnecessary to consider that portion of his letter in that Dunleavy specifically requested that he be placed on the November list. It appears Harper understood that to be the case in that he sought legal advice only with respect to Dunleavy's placement on the Union's November national shipping list.

[14] The Union's telephone logs reflect Dunleavy called the union hall at 9 a.m. Holleyfield reflected on the log that Dunleavy ''wanted to know why TCH [Harper] has not called back.''

[15] On cross-examination by the Union's attorney, Dunleavy testified Holleyfield told him the November list had already been prepared as of the time they spoke and he was not included on it.

[16] Holleyfield was not called as witness nor was her absence explained in any manner; thus, what Dunleavy attributed to her was not directly contradicted.

would be futile. Dunleavy testified: ''After I perused Mr. Harper's letter of November 3, [1988] then I attempted to get work through the American Radio Association.'' Dunleavy testified he was notified by the ARA on either November 5 or 6, 1988, that he was being given an assignment on the merchant vessel *OMI Hudson*. Dunleavy said that he was ''sure'' he was not notified of the assignment on November 4, 1988. Dunleavy testified he flew to Portugal on November 6 and boarded the *OMI Hudson* at Setubal, Portugal, on November 7, 1988.[17]

I find Dunleavy's testimony that he was not notified of his ARA assignment on November 4 to be suspect and unreliable. I also do not rely on his testimony that he perused Harper's November 3 letter telling him why he could not be on the Union's national shipping list before he sought an assignment through the ARA. I am not convinced that absent special mailing service, not shown to have been utilized here, that a letter would be delivered in 1 day by the United States Postal Service from Panama City, Florida, to Augusta, New Jersey. I reach the conclusions immediately set forth above because, among other things, the ARA routinely issues assignment slips to users of its services and the slip for Dunleavy reflects he was assigned to the *OMI Hudson* at 9:50 a.m. on November 4, 1988. Additionally, Union President Harper testified the Union was routinely notified of the ARA assignment to Dunleavy by the ARA on November 4, 1988. I am, however, persuaded Dunleavy made his telephone call to the union hall on November 4, 1988, and spoke with Holleyfield before he received his ARA assignment or before the Union had been notified of that assignment to Dunleavy. I am convinced that if Holleyfield had known of the ARA assignment she would have mentioned that fact to Dunleavy when she spoke to him or Harper would have joined that telephone conversation and told Dunleavy he knew Dunleavy had been given an assignment from the ARA. I do not find the minor time differences between the Union's telephone log of Dunleavy's call and the time reflected on the ARA assignment sheet to warrant a different credibility conclusion.

President Harper testified the November national shipping list was prepared at the close of business on November 7, 1988, and not on November 1, because that date fell on a Tuesday and the Union was still utilizing the previous weeks' national shipping list. He also stated another reason it was not prepared before November 7, 1988, was the Union had a real question concerning Dunleavy's eligibility to be on its November national shipping list. Harper stated that even if the national shipping list had been prepared on November 1 no use could have been made of it prior to 5 p.m., on November 7. Harper testified he and Chief Dispatcher Debbie Thomas had ''extensive discussions'' about whether to include Dunleavy on the November national shipping list, but that he definitely did not make a decision on November 1 because he had until November 7 to do so. He however acknowledged that he and Thomas did, in fact, make a decision about Dunleavy's status on November 4, 1988, when the Union learned Dunleavy had accepted an assignment on the *OMI Hudson* from the ARA. Harper testified:

> [Thomas][18] reported to me that all our discussions were of no account because Mr. Dunleavy had been assigned to a ship and was not, under any circumstances, eligible to be on the [November] National Shipping List.

Harper said he ''felt a great sense of relief'' when he learned Dunleavy had accepted an assignment from the ARA, thus resolving the question of whether he would be listed on the Union's November national shipping list. He said it was the ''invariable'' practice of the Union not to include an individual on its national shipping list once such an individual had accepted an assignment of 14 days or more on a nonexempted ship such as the *OMI Hudson*. Harper testified the *only* reason Dunleavy was not included on the Union's November national shipping list was that he had accepted an assignment on a seagoing vessel and as such was not eligible to be included on the list. Harper testified that even if the list had been prepared on November 1, and even if Dunleavy had been included thereon, he would have been dropped from the list on November 4, 1988, because he had taken an assignment on the *OMI Hudson.*

The Union through its counsel submitted a letter of position to Region 15 of the Board on December 20, 1988, regarding the Dunleavy case. In his letter counsel informed the Board's representative in pertinent part as follows:

> 1. Mr. Dunleavy has not been restored to the shipping lists because he is ineligible as a result of the fact that he has failed to pay a fine of $1,000 which was duly levied upon him for violation of Hiring Hall rules more than one year ago.
>
> . . . .
>
> 5. All members and non-members are required to pay all fines relating to violation of shipping rules in order to be placed on the shipping lists.
>
> 6. In the event that Mr. Dunleavy were to pay his $1,000 fine, he would thereby become eligible for listing on the shipping lists of the ROU provided that he comply with other applicable requirements which apply to all members and non-members.
>
> 7. Among other requirements is a limitation as to the total number of days which may be shipped in any year. Thus, for example, there is a mandatory limitation of 250 days. This limitation is established in order to achieve equal distribution of work. Since Mr. Dunleavy has been sailing during the period of suspension, the Hiring Hall is unaware of whether Mr. Dunleavy has taken the mandatory vacation time. It is appropriate, however, for the Hiring Hall to examine this question while it is clear that Mr. Dunleavy is ineligible because he has failed to pay his fine.
>
> 8. In addition, it is clear that Mr. Dunleavy would be violating the shipping rules if he were to once again ride the shipping list at the same time that he was riding the ARA shipping list and at the same time that he was seeking non-union assignments.
>
> It should be made clear, however, that none of these questions are appropriate to consider until Mr. Dunleavy has paid his fine for prior violation of the shipping rules.
>
> . . . .

[17] The assignment lasted until on or about December 8, 1988.

[18] Thomas died shortly before the hearing.

cc: Thomas C. Harper, President, Radio-Electronics Officers Union:

Union President Harper testified his attorney's letter of position to the Board's representative outlined ''nice reasons'' for Dunleavy not being on the Union's November national shipping list, but the reasons listed by his attorney were not in fact those relied on the Union in excluding Dunleavy from its November national shipping list. Harper testified the conversation he had with his attorney and the information he provided to his attorney about Dunleavy's status all predated November 3, 1988. Harper, however, acknowledged he received a copy of his attorney's letter that was sent to the Board's representative.

First, I am persuaded the Union, and more specifically Harper, had decided by at least November 1, 1988, to exclude Dunleavy from its November national shipping list. I do not credit Harper's testimony to the contrary. First, the Union's shipping rules reflect ''The National Shipping List will be updated monthly on the first business day of each month.'' The first business day of November was November 1, which fell on a Tuesday. The fact that the list was to be updated on the first business day of the month, however, does not mean the list was effective on that date. Secondly, Harper in his November 3 letter to Dunleavy informed Dunleavy that Harper had sought legal advice and that Dunleavy was ineligible to be on the November national shipping list because he had, among other things, not paid a $1000 fine levied against him by the Union. Thirdly, Union Spokesperson Holleyfield told Dunleavy on November 4 he was not on the Union's November national shipping list. Accordingly, I conclude the list was, as required by the shipping rules, prepared on November 1 and that Dunleavy was not included on it. I also do not credit Harper's testimony that his attorneys' letter of position to the Board's representative on December 20, 1988, only provided the Board's representative with ''nice but unrelied upon reasons'' for excluding Dunleavy from the November national shipping list. In that regard, I note Harper ''felt a great sense of relief'' when Dunleavy took the ARA assignment that he asserts prevented Dunleavy from being on the November national shipping list. I find totally unbelievable Harper's testimony that he simply failed, prior to December 20, 1988, to advise his attorney of that fact—a fact he perceived to be controlling with respect to Dunleavy's eligibility to be on the list. I also note that although Harper contends his attorney's letter was inaccurate he never attempted to correct any inaccuracies even though he admittedly received a copy of the letter at the time it was served on the Board's representative by his attorney.

I am persuaded counsel for the General Counsel established a prima facie showing sufficient to support an inference that protected conduct was a motivating factor in the Union's decision to exclude Dunleavy from its November 1988 national shipping list. *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982). See *NLRB v. Transportation Management Corp.*, 462 U.S. 393, 399–403 (1983). First, Dunleavy was told as early as November 3 he was not on the Union's national shipping list. Secondly, he was told by Union Spokesperson Holleyfield on November 4, 1988, specifically that he was not on the November national shipping list. Thirdly, Union President Harper in a November 3, 1988 letter to Dunleavy spelled out to him that one of the reasons he was not eligible to be on the Union's November national shipping list was that he had not paid a $1000 fine the Union had levied against him. These factors establish counsel for the General Counsel's prima facie case. I find the Union has failed to demonstrate it would have excluded Dunleavy from its November national shipping list in the absence of his owing a fine to the Union or that he otherwise would have been excluded from its lists for legitimate reasons related to rules of the hiring hall. The Union's contention that Dunleavy accepted an ARA assignment and thus excluded himself from being eligible to be on its November national shipping list is without merit. As testified to by Dunleavy, he would not have been in the position of seeking work assignments outside the Union's hiring hall if he had not been told prior to doing so that he was not on the Union's November national shipping list. The Union's further arguments that it had other lawful reasons based on its shipping rules to exclude Dunleavy from its November national shipping list are also without merit. The Union asserts Dunleavy was in violation of its rule regarding radio officers taking mandatory vacation time and its rule regarding being advised concerning nonunion job assignments. The Union's argument on these points is defeated by its own handiwork. Union counsel in his letter of position to the Board on December 20, 1988, stated, ''Mr. Dunleavy has not been restored to the shipping list because he is ineligible as a result of the fact he has failed to pay a fine of $1,000.'' Union counsel then addressed certain rule infractions attributed to Dunleavy by the Union but added in his letter of position, ''It should be made clear, however, that none of these questions are appropriate to consider until Mr. Dunleavy has paid his fine for prior violation of the shipping rules.'' I find, in light of all the above, the Union has failed to meet its burden and further find the *sole* reason Dunleavy was excluded from the Union's November national shipping list was his failure to pay the $1000 fine in question. It is an unfair labor practice for a union operating an exclusive hiring hall with a union-security clause to refuse to refer or register for referral a member or user of its services for reasons other than a failure to tender periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership. Inasmuch as fines levied against members are not periodic dues, such fines may not be enforced by a union through a threat of a loss of employment or the actual denial of employment. I conclude and find the actions of the Union against Dunleavy violated Section 8(b)(1)(A) and (2) of the Act.

I shall leave to the compliance stage of this proceeding the Union's contention that Dunleavy worked the entire time covered by its November 1988 national shipping list and could not have lost employment opportunities attributable to it after the November 1988 national shipping list expired.

CONCLUSIONS OF LAW

1. Sea Land Service, Inc. is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Radio-Electronics Officers Union (Radio Officers Union) is a labor organization within the meaning of Section 2(5) of the Act.

3. By on or about April 1, 1988, removing Michael F. Harris from its referral lists because he failed to remain current in his dues without first informing him of his failure and the specifics related thereto and without affording him a reasonable opportunity to meet his obligations, the Union violated Section 8(b)(1)(A) and (2) of the Act.

4. By since on or about November 30, 1988, failing to demonstrate it allows delinquent dues payers a reasonable time to correct their deficiencies before removing them from its referral lists to the Union violated Section 8(b)(1)(A) and (2) of the Act.

5. By since on or about November 1, 1988, refusing to allow Harry Dunleavy to register for referral from its exclusive hiring hall because of his failure to pay a fine levied against him by the Union it has engaged in a discriminatorily hiring hall practice in violation of Section 8(b)(1)(A) and (2) of the Act.

REMEDY

Having found that the Union has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Union unlawfully refused to allow Dunleavy to register for referral, I shall recommend it be ordered to list Dunleavy on its next national shipping list and, on request from him, list him on any appropriate on-hand list that he requests to be listed on. I further recommend that the Union be ordered to make Dunleavy whole for any loss of wages and benefits he may have suffered as a result of the Union's refusing to allow him to register on its national shipping list on and after November 1, 1988. Inasmuch as I have found the Union unlawfully removed Michael F. Harris' name from its referral list, I shall recommend that he be listed on the Union's next national shipping list and that he be listed on any on-hand list that he specifically requests to be listed on. I also recommend that the Union be ordered to make Harris whole for any loss of wages and benefits he may have suffered as a result of his having been unlawfully removed from the Union's referral list on or about April 1, 1988. Any backpay found to be due shall be computed in accordance with the formula set forth in *F. W. Woolworth Co*., 90 NLRB 289 (1950); and shall include interest in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1083 (1987).[19] Inasmuch as I have concluded that a reasonable time for dues payers to correct any deficiencies that might result in them being removed from the Union's referral list is 15 days, I shall not recommend that the Union rescind its bylaws in that regard but rather order that it not remove any delinquent dues payers from its referral lists without demonstrating such persons have been allowed a reasonable time (at least 15 days) to correct any deficiencies before removing them. Finally, it is recommended that the Union be ordered to post a notice to members attached as ''Appendix'' for a period of 60 days in order that members and users of its hiring hall may be apprised of their rights under the Act and the Union's obligation to remedy its unfair labor practices.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[20]

ORDER

The Union, Radio-Electronics Officers Union (Radio Officers Union), Panama City, Florida, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Removing Michael F. Harris' name from its referral lists for failure to remain current in his dues without first informing him of his failure and the specifics related thereto, and without affording him a reasonable opportunity to meet his obligations with respect thereto.

(b) Refusing to allow Harry Dunleavy to register for referral or referring him for work assignments in his rightful order of priority for reasons unconnected to his failure to tender and pay periodic dues, registration fees, and initiation fees, uniformly required as a condition acquiring or maintaining membership in the Union or as a condition required for using the Union's exclusive hiring hall system.

(c) Removing delinquent dues payers from its referral lists without first affording such delinquent persons a reasonable time to correct their deficiencies.

(d) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Notify Harry Dunleavy and Michael F. Harris that it has no objection to listing them for referral on its exclusive hiring hall lists in their rightful order of priority.

(b) Make Harry Dunleavy and Michael F. Harris whole for any loss of earnings they may have suffered because of the discrimination against them in accordance with the section of this decision.

(c) Post at its offices, meeting halls, and hiring halls copies of the attached notice marked ''Appendix.''[21] Copies of said notice, on forms provided by the Regional Director for Region 15, after being signed by the Union's authorized representative, shall be posted by it immediately upon receipt thereof and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Union to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Union has taken to comply.

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[19] Under *New Horizons*, interest is computed at the ''short-term Federal rate'' for the underpayment of taxes as set out in the 1986 amendment to 26 U.S.C. § 6621. Interest on amounts accrued prior to January 1, 1987 (the effective date of the 1986 amendment to 26 U.S.C. § 6621), shall be computed in accordance with *Florida Steel Corp*., 231 NLRB 651 (1977).

[20] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[21] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to register for referral Harry Dunleavy and Michael F. Harris in their rightful order of priority on our exclusive hiring hall lists for discriminatorily reasons.

WE WILL NOT remove delinquent dues payers from our exclusive hiring hall lists until they have been afforded a reasonable time (at least 15 days) to correct their deficiencies.

WE WILL NOT in any like or related manner restrain or coerce employees, members, or users of our exclusive hiring hall in the exercise of their rights guaranteed by Section 7 of the Act.

WE WILL make Harry Dunleavy and Michael F. Harris whole for any pay or benefits they may have suffered as a result of our discrimination against them.

RADIO-ELECTRONICS OFFICERS UNION